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From:

Sent: Tuesday, February 7, 2012 4:04 PM

To:

Cc:

Subject: FW: Request for advice --

We believe the proper course of action is to issue a statutory notice of deficiency in order to validly assess and collect the liability under section 453A.

A deficiency is generally defined by section 6211 as the difference between the actual tax liability of a taxpayer and the tax shown on that taxpayer's return. More specifically, the definition applies to cases of "income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 41, 42, 43, and 44" of the Code.

Interest on tax liabilities is not subject to deficiency procedures, as it does not fall under the definition of a deficiency. However, "interest" is defined in Subtitle F, Procedure and Administration, Chapter 67, Interest. This is interest on underpayments and interest on overpayments, which is not the same as the additional liability that is reported under section 453A. See sections 6601 and 6611. Moreover, section 6601(e) specifically provides that interest under section 6601 is payable upon notice and demand (thus not subject to the deficiency procedures).

Section 453A(c) states that "If an obligation to which this section applies is outstanding as of the close of any taxable year, the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined in the manner provided under paragraph (2)."

The section 453A liability is reported on Form 1040, line 60 or Form 1040NR, line 59 (see Pub. 537, p.14). This is the "total tax" line.

Because the "interest" liability in section 453A is part of subtitle A and is reported as tax on a return, we believe that when the Service determines the actual section 453A liability is greater than that shown on a return, deficiency procedures apply.

If you need anything further at this time, please let me know.